

1
2
3 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 TIMOTHY L. MENZIES JR.,

6 Petitioner,

7 v.

8 STATE OF WASHINGTON,

9 Respondent.

Case No. C20-5161-RJB-TLF

ORDER TO SHOW CAUSE

10 Petitioner, Timothy Menzies, Jr., who is proceeding *pro se*, filed a Petition for
11 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Dkt. 3. Petitioner challenges his
12 October 13, 2017 conviction and sentence for two counts of “R1.” *Id.* The petition has
13 not been served on respondent.

14 Under Rule 4 of the rules governing § 2254 petitions, the Court must promptly
15 examine a habeas petition when it is filed, and if it plainly appears from the petition and
16 its attachments the petitioner is not entitled to relief, the Court must dismiss the petition.

17 Following a careful review of the petition, the Court concludes that petitioner’s
18 federal habeas petition—on its face—is subject to dismissal due to a failure to exhaust
19 state court remedies. Petitioner indicates he appealed his October 2017, judgment and
20 sentence to the Washington State Court of Appeals but does not indicate the result of
21 that appeal or whether the appeal is still pending. Dkt. 3, at 2. Petitioner indicates that
22 he has not sought review by a higher court than the Court of Appeals. *Id.*

23 Petitioner also indicates he did not raise the grounds raised in the instant petition
24 on his direct appeal. Dkt. 3, at 5-12. Petitioner indicates that he does not intend to bring
25

1 the claims raised in his federal habeas petition to the state courts—state courts would
2 never have the opportunity to consider the habeas claims raised in his federal petition—
3 asserting that the state courts lack jurisdiction over issues that are raised under the
4 United States Constitution.¹ Dkt. 3, at 5-12. However, the exhaustion of state court
5 remedies is a prerequisite to granting a petition for writ of habeas corpus. See 28 U.S.C.
6 § 2254(b)(1)². The Court therefore orders the petitioner to show cause why the Court
7 should not dismiss this federal habeas corpus petition without prejudice.

8 DISCUSSION

9 A state prisoner is required to exhaust all state court remedies, by fairly presenting
10 claims of violation of federal rights before the state courts, before seeking a writ of habeas
11 corpus. 28 U.S.C. § 2254(b)(1). The exhaustion requirement is a matter of comity,
12 intended to afford the state courts the “initial opportunity to pass upon and correct alleged
13 violations of its prisoners’ *federal* rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971)
14 (emphasis added). This is appropriate, because “state courts, like federal courts, are
15 obliged to enforce federal law.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999). To
16 properly exhaust their federal claims, a would-be habeas petitioner must finish “one
17
18

19 ¹ The Court notes that in the box labeled item 13(a) of the petition the petitioner checked “yes” in
20 response to the question of whether all grounds for relief raised in the petition have been presented to the
21 highest state court having jurisdiction. Dkt. 3, at 12. The Court interprets this as a typographical or
22 scrivener’s error however as petitioner makes clear in his explanation to the question that “**no grounds**
23 **herein have been raised at the state level**, as the state has no jurisdictional authority over federal
24 constitutional matters.” *Id.* (emphasis added).

25 ² 28 U.S.C. §2254 (b)(1) provides, in relevant part: “An application for a writ of habeas corpus on behalf
of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears
that--
(A) the applicant has exhausted the remedies available in the courts of the State[.]”

1 complete round of the State's established appellate review process," up to the highest
2 state court with powers of discretionary review. *Id.*, 845.

3 A federal court must dismiss a federal habeas corpus petition if its claims are
4 unexhausted. *Coleman v. Thompson*, 501 U.S. 722, 731 (1991). This Court has the *sua*
5 *sponte* authority to examine the question of exhaustion at this stage of review. *Campbell*
6 *v. Crist*, 647 F.2d 956, 957 (9th Cir. 1981) ("This court may consider whether state
7 remedies have been exhausted even if the state does not raise the issue"). Where a case
8 remains under appeal, a habeas petition is premature. See *Sherwood v. Tomkins*, 716
9 F.2d 632, 634 (9th Cir. 1983) (petitioner seeking federal habeas relief must await the
10 outcome of his state court appeal); *Daniels v. Nelson*, 415 F.2d 323, 323 (9th Cir. 1969)
11 ("habeas petition, filed while [petitioner's] state appeal was pending, is premature").

12 Petitioner must raise the grounds for relief contained in his habeas petition to the
13 Washington Court of Appeals and Washington Supreme Court. Petitioner contends he
14 has not presented his grounds for relief to the state courts because the state courts lack
15 the "jurisdictional authority to decide on United States Constitution matters, which are
16 outside [its] jurisdictional or statutory governing limits." Dkt. 7, at 5-12. This argument
17 fails, because 28 U.S.C. § 2254(b)(1) recognizes the jurisdiction of state courts to
18 adjudicate constitutional issues, without question. Federal habeas relief is available to
19 address where the state court's adjudication was "contrary to, or an unreasonable
20 application of, clearly established federal law, as determined by the Supreme Court of
21 the United States." 28 U.S.C. § 2254(d)(1).

22 Petitioner's speculation or personal belief that he would be unsuccessful if he
23 raised his Constitutional claims to the state courts does not excuse his failure to do so.

1 See, e.g., *Roberts v. Arave*, 847 F.2d 528, 530 (9th Cir. 1988) (“the apparent futility of
2 presenting claims to state courts does not constitute cause of procedural default.”);
3 *Engle v. Isaac*, 456 U.S. 107, 130 (1982) (A petitioner “may not bypass the state courts
4 simply because he thinks they will be unsympathetic to the claim.”).


5 Petitioner acknowledges he has not presented the claims raised in his petition to
6 the highest state court and, as such, his petition is not eligible for federal habeas review.
7 Dkt. 3, at 1-12. The Court also notes that it is unclear from the petition whether
8 petitioner’s direct appeal of his judgment and sentence is still pending. If petitioner’s
9 direct appeal is still pending his petition would be premature and subject to dismissal on
10 that basis as well. Dkt. 3, at 2. Therefore, the Court orders petitioner to show cause why
11 his petition is cognizable for federal habeas review and should not be dismissed without
12 prejudice.

13 ORDER

14 Based on the foregoing discussion, the Court finds that this petition is not eligible
15 for federal habeas review.

16 The Court **orders the petitioner to show cause** in writing why the petition
17 should not be dismissed without prejudice, to allow him to exhaust his claims in the
18 state courts. Petitioner must show cause by **April 6, 2020**, and his response should be
19 limited to **ten (10) pages**. The failure to file a timely response may result in the
20 dismissal of this matter without prejudice.

21 Dated this 4th day of March, 2020.

22 
23 Theresa L. Fricke
24 United States Magistrate Judge
25